

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9394 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARMINDARSING MALIKSING

SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 2, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 18/09/1996 passed by the Commissioner of Police Ahmedabad under the provisions of sub-section (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act of 1985')

2. Mr H.R.Prajapati, learned counsel for the

petitioner has challenged the order of detention on various grounds. It is not necessary to deal with all the contentions as the present Special Civil Application deserves to be allowed only on the ground that there is a delay in supplying the translation of the documents and as such, the petitioner has been deprived to make effective representation.

3. It is submitted by the learned counsel that a representation dated 05/10/1996 was addressed to the Additional Chief Secretary, Home Department, a copy of which is placed on record of this case as Annexure 'C'. It is stated therein that the petitioner has been supplied documents in Gujarati and Hindi languages. The petitioner cannot read and understand the documents written in Gujarati. Therefore, a request was made that the translation of the documents which are in Gujarati, may be supplied in the language known to him i.e. Hindi.

4. Mr Raj Gopal, Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, has filed his affidavit. He has stated in para-8 of his affidavit that the representation dated 05/10/1996 which was addressed to the Additional Chief Secretary (Home) was received in the Branch on 09/10/1996. It was placed before the Under Secretary on 09/10/1996 who cleared the same on the very same day and thereafter, it was placed before the then Deputy Secretary, who cleared the file on 10/10/1996. It is further stated that as some translated documents were asked for by way of the said representation, it was sent to the office of the Police Commissioner under communication dated 29/10/96 as the Gujarati type section of Special Branch of Home Department was overburdened during the month of October. It is also stated that there were other public holidays in between the 12th, 13th, 20th, 21st, 26th and 27th October.

5. It appears from the affidavit of Mr Raj Gopal that the representation remained pending with the Home Department during the period from 10/10/1996 to 29/10/1996. The only explanation given is that the Gujarati type section of the Special Branch of the Home Department was overburdened during the said period. It is further stated that the papers were sent to the office of the Commissioner of Police for translation under communication dated 29/10/1996. The representation of the petitioner remained pending with the Home Department for 19 days, only for the purpose of taking decision as to whether the translated documents should be given from the office of the Home Department or that the same has to be sent to the office of the Commissioner of Police,

Ahmedabad. I have no hesitation in saying that the matter has been dealt with in a most casual manner by the Home Department. So long as the provisions of detention are concerned, in the State of Gujarat, the Home Department of the State will have to be equipped with sufficient number of typists and the translators. A delay on this ground cannot be tolerated. Thus, the petitioner has been deprived to make an effective representation without delay and thus, there is a violation of the requirements of the provision of Article 22 (5) of the Constitution of India. Thus, the impugned order of detention is illegal and the further detention of the petitioner cannot be allowed to be continued.

6. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 18/09/1996 is quashed and set aside. The petitioner - detenue shall be released forth, if he is not required in any other case. Rule is made absolute accordingly.

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